

In the Matter of License No. 251451 Merchant Mariner's Document No.
2-187616-D3 and all other Seaman Documents
Issued to: PIERRE B. BAIRD

DECISION OF THE COMMANDANT
UNITED STATES COAST GUARD

1452

PIERRE B. BAIRD

This appeal has been taken in accordance with Title 46 United States Code 239(g) and Title 46 Code of Federal Regulations 137.30-1.

By order dated 16 October 1963, an Examiner of the United States Coast Guard at Galveston, Texas suspended Appellant's seaman documents for three months upon finding him guilty of negligence. The portion of a specification which was found proved alleges that while serving as Chief Engineer on board the United States SS MAXTON under authority of the license above described, between 24 December 1960 and 4 January 1961, Appellant gave erroneous information to the Master of the vessel regarding fuel consumption, thereby contributing to the exhaustion of the fuel supply while at sea off the Coast of Japan. The balance of this specification, and another specification which pertained to the period between 10 December and 24 December 1960, were found not proved by the Examiner.

At the hearing, Appellant was represented by professional counsel. Appellant entered a plea of not guilty to the charge and specifications.

The Investigating Officer introduced in evidence, without objection, a copy of the Engineer's Logbook and Deck Logbook for the voyage in question as well as a copy of the Coast Guard investigation of this matter which includes testimony by the Master, Appellant, Chief Mate, and Chief Pumpman.

In defense, Appellant offered in evidence his own testimony and rested.

At the end of the hearing, the Examiner rendered a written decision which was served on Appellant on 21 October 1963. The delay in commencing this proceeding is not explained in the record or contested by Appellant. (References below to the hearing and investigation records are indicated, respectively, by "R." and "I." followed by the page number.)

FINDINGS OF FACT

On a voyage which started on 6 December 1960 and extended beyond 4 January 1961, Appellant was serving as Chief Engineer on board the United States SS MAXTON, a T-2 type tanker, and acting under authority of his license. On the latter date, the vessel exhausted her usable fuel supply approximately 15 miles off the Coast of Japan and was towed to a safe anchorage in Tokyo Bay.

The MAXTON was scheduled to make a voyage from Vancouver, Washington to Karachi, Pakistan, via Yokohama, Japan, with a cargo of bulk wheat. The route to be travelled to Yokohama measured 4900 miles. The Master planned to depart with 5500 barrels of fuel oil. This would provide a safety factor of slightly less than the usual 25 percent in addition to the estimated average consumption of .92 BPM. For some unsatisfactorily explained reason, the ship departed Vancouver at 1607 on 10 December with 5145 barrels of fuel in the four fuel oil tanks. There are two deep tanks forward and two settling tanks aft. The fuel oil service pumps take suction directly on fuel in the settling tanks.

Severe weather resulted in a high rate of fuel consumption as well as additional mileage and caused shifting cargo to shear off the butterworth plate on the forward starboard fuel tank. This fuel became contaminated with pieces of lumber, rubber, rope and other debris. Due to these factors and the low safety margin of fuel on departure, the vessel was forced to stop at Midway Island, United States Naval Base, on 24 December, for emergency bunkers. Appellant and the Master figured out that the vessel had averaged 1.3 BPM (actually 1.29) between Vancouver and Midway. There were 935 barrels remaining on arrival at Midway, so 4210 barrels had been used for the 3263 miles travelled. About 800 of the 935 barrels on board were contaminated.

The Master was informed by Appellant that he would be in favor of heading for Yokohama (2250 miles from Midway) if at least 1800 barrels of fuel could be obtained at Midway (I. 56). This was also made contingent upon being able to pump the contaminated fuel to the after tanks so that it could be used. Appellant assured the Master that, under these circumstances, there would be ample fuel (R. 24) because the fuel consumption to Yokohama should be close to the normal of .92 BPM assuming the weather was favorable (I. 56, 62) or, at most, .95 BPM in "fairly good" weather (I.62).

The fuel oil supply at Midway is limited for commercial vessels. They are permitted to enter only for emergency supplies. The amount sold to the MAXTON was enough to return approximately 1150 miles to Honolulu based on the consumption rate of 1.3 BPM from Vancouver plus a 25 percent safety factor, without including

the 935 barrels on board. The amount received was 1879 barrels. This made a total of 2814 barrels when added to the 935 barrels.

The MAXTON departed Midway Island at 1400 on 24 December. When Appellant succeeded in pumping the contaminated fuel into the starboard fuel tank aft, the Master decided to head for Yokohama since going in the opposite direction to Honolulu would result in an eight-to ten-day delay in arriving at Yokohama. Accepting Appellant's word that the contaminated fuel could now be used (I. 55, 63), the Master realized that there was just enough fuel to go the estimated distance of 2250 miles to Yokohama if the fuel consumption did not exceed an average of 1.25 BPM (1 BPM plus a 25 percent safety factor).

The unfavorable weather continued during most of the trip to Yokohama. Appellant's daily reports to the Master accurately reflected the amount of fuel consumed each day. The contaminated fuel became increasingly difficult to use because of rope yarn and other fine stuff clinging to the fuel oil strainers. Finally, at 0730 on 4 January, fuel suction could not be maintained and the engines were stopped at about 0800. The ship was at 34 degrees, 56 minutes North latitude, 140 degrees, 19 minutes East longitude. She was approximately 15 miles off the Coast of Japan, 30 miles from the turn northward into Tokyo Bay, and about 60 miles from Yokohama. The distance travelled from Midway was 2247 miles. According to the Engineer's Logbook, 2771 of the 2814 barrels of fuel had been consumed leaving a balance of 43 barrels of contaminated fuel which was not usable. On this basis, the rate of consumption was 1.23 BPM. At this rate, the vessel could have gone 35 miles farther if the remaining 43 barrels had not been too contaminated to use.

No commercial tugs were available when the Master sent a message to the ship's agent at Yokohama. The MAXTON drifted without power in safe waters for approximately 14 hours until towed by the USS SAFEGUARD (ARS-25) to an anchorage in Tokyo Bay. Fuel was received and the ship proceeded to Yokohama to repair damage caused by the heavy weather. The MAXTON sailed for Karachi on 9 January 1961.

Appellant has no prior record.

BASES OF APPEAL

This appeal has been taken from the order imposed by the Examiner. It is contended that the weight of the evidence does not support the finding that Appellant gave erroneous information to the Master regarding fuel consumption or the finding that the Master was informed by Appellant that he would be in favor of going

directly to Yokohama if they received 1800 barrels of fuel at Midway since the fuel consumption would not be above the normal .92 BPM assuming the weather conditions were normal.

The Examiner's opinion, that Appellant should have examined the contaminated fuel at Midway in order to ascertain its condition, has no bearing on the offense found proved.

APPEARANCE: Greenberg and Schwartz of Galveston, Texas
 by K. Ball Withers, Esquire, of Counsel

OPINION

It is my opinion that the evidence, as reflected in the above findings of fact, does not support the conclusion that Appellant gave erroneous information to the Master, between 24 December 1960 and 4 January 1961, on the way to Yokohama from Midway Island. Appellant's daily fuel oil reports to the Master during this time were accurate and the Master had full knowledge of all the other factors on which his decision to head for Yokohama was based.

The Examiner rested his conclusion on the fact that, as testified to by Appellant, he assured the Master there would be ample fuel under normal weather conditions to go to Yokohama. Appellant admitted he also told the Master that the rate of fuel consumption would be approximately .95 BPM if the weather was only "fairly good." Since it is clear that this information as to fuel consumption was predicted on weather conditions which did not materialize, there would be no evidence that this was erroneous information.

Both the Master and Appellant had calculated that the fuel consumption rate had been 1.3 BPM in the severe weather between Vancouver and Midway. Appellant knew the amount of fuel obtained at Midway did not make allowances for less unfavorable conditions, despite the limited fuel available, since it was based on 1.3 BPM plus a 25 percent safety factor. Therefore, not only was the information given to the Master not erroneous but the Master had other information to put him on notice that 1.3 BPM was the logical figure to use as the basis for estimating the fuel required to get to Yokohama regardless of Appellant's "fair weather" prediction of .95 BPM. (At the rate of .95 BPM, the ship would have required 2138 of the 2814 barrels on board to travel the estimated distance of 2250 miles to Yokohama and 2192 barrels for the actual distance of 2307.)

With respect to the figure of 1.3 BPM fuel consumption to Midway, there is some suggestion in the record that this figure is excessive in view of testimony that the daily fuel consumption

figures in the Engineer's Logbook were padded in order to make up an unaccounted for shortage of about 355 barrels upon departure from Vancouver. If the latter were true, the fuel consumption rate would have been 1.18 BPM. But this possibility is rejected because the testimony of the Master and Appellant supports the entry in the Engineer's Logbook that there were 5145 barrels of fuel on board upon departure and this is 355 barrels short of the intended figure of 5500 barrels. Consequently, if any fuel was accidentally lost, it was reflected in the total shown on board at the beginning of the voyage and there was no daily padding which would have resulted in an artificially high fuel consumption rate based on the figures contained in the Engineer's Logbook. This supports the opinion that the Master was on notice to rely on the figure of 1.3 BPM which both he and Appellant had determined was correct.

The only other basis for concluding that Appellant might have given erroneous information to the Master would be that he led the Master to believe that all of the contaminated fuel could be used after it was pumped aft. But since the Master knew the nature of the contamination and that there had been some difficulty pumping it aft due to the contamination, he was in a position to recognize the probability that all of the contaminated fuel could not be used because the foreign elements in the fuel would become more and more concentrated as the amount of oil decreased. The Engineer's Logbook shows that 2771 of the 2814 barrels on board were used before the ship was required to stop. This left 43 barrels rather than 80 as testified to by Appellant. I do not think that he misled the Master by failing to inform him of this possibility because 43 barrels was not an excessive amount of nonusable fuel under the circumstances known to the Master. Consequently, I agree with Appellant's contention that his failure to determine the amount of contamination at Midway had no bearing on the offense found proved by the Examiner, especially since the contamination was apparently sufficient for the total amount of the contaminated fuel to be excluded in determining the amount of fuel which the ship was permitted to purchase at Midway.

Appellant's explanation that the fuel consumption was abnormally high because of the contaminated fuel (I. 58, 61) is not convincing. As long as the fuel could be used after removal of the foreign substances by the fuel oil strainers, there is no apparent reason why the amount of this fuel actually used would not produce substantially the same mileage as the rest of the fuel. This is borne out by the fact that during slightly less adverse weather conditions after departing Midway, the rate of fuel consumption decreased about 5 percent from 1.3 BPM (actually 1.29) to 1.23 BPM. According to Appellant's unsupported claim, the rate of consumption should have increased.

CONCLUSION

This casualty did not result from information given by Appellant to the Master but from the fact that, although the Master had full knowledge of the pertinent factors concerning the fuel oil consumption to be expected, he decided to take a chance in order to avoid an additional eight-to ten-day delay by not going to Honolulu from Midway Island. The Master emphatically stated that he alone made this decision after studying all the information available (I. 63). The ship failed to reach her destination using the fuel on board due to the continued unfavorable weather and the fact that the distance to Yokohama had been underestimated by approximately 60 miles upon departure from Midway Island.

For the reasons discussed above, the conclusion that Appellant gave the Master erroneous information which contributed to this casualty is set aside. The charge and specification are dismissed.

ORDER

The order of the Examiner dated at Galveston, Texas, on 16 October 1963, is VACATED.

G. A. Knudsen
Rear Admiral, United States Coast Guard
Acting Commandant

Signed at Washington, D. C., this 24th day of April 1964.